

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THE GEO GROUP, INC.,

Plaintiff,

v.

CITY OF TACOMA, a Washington
municipal corporation,

Defendant.

CASE NO. 3:18-cv-05233-RBL

ORDER ON CROSS MOTIONS FOR
SUMMARY JUDGMENT

DKT. ## 50 & 63

INTRODUCTION

THIS MATTER is before the Court on Plaintiff The GEO Group, Inc., and Defendant City of Tacoma's Cross Motions for Summary Judgment. Dkt. ## 50 & 63. GEO is a private company that owns and operates the Northwest Detention Center (NWDC), an immigration detention facility in Tacoma's industrial tide flats district. GEO operates NWDC pursuant to a contract with Immigration and Customs Enforcement. On March 7, 2018, the City passed Amended Ordinance No. 28491, which restricts the ability of correctional and detention facilities to expand or modify their existing facilities in certain urban zones, including the zone where NWDC is located. This prompted GEO to sue the City to invalidate the Amended Ordinance as unconstitutional.

1 The Court previously dismissed GEO's § 1983 damages claim. *See* Dkt. # 48. Now, GEO
2 moves for summary judgment on its claims under the Supremacy Clause seeking declaratory and
3 injunctive relief. Dkt. # 50. According to GEO, the City's Amended Ordinance is
4 unconstitutional because it directly regulates and discriminates against the Federal Government
5 and is preempted by federal immigration law. The City has filed its own Cross Motion for
6 Summary Judgment arguing that it is entitled to judgment on GEO's Supremacy Clause claims
7 and that all of GEO's claims are not justiciable. Dkt. # 63.

8 For the following reasons, the Court GRANTS the City's Motion in part and DENIES
9 GEO's Motion.

10 BACKGROUND

11 GEO is a private company specializing in corrections, detention, and mental health
12 treatment. For several years, GEO has operated NWDC as an immigration detention facility
13 pursuant to a contract with ICE. Under its contract, GEO must "furnish the facility and services
14 inclusive of a trained and qualified management staff, supervision, manpower, relief officer(s),
15 uniforms, equipment, vehicles, and supplies." 2015 ICE Contract, Dkt. # 51-1, at 43. The
16 contract further provides that GEO must supply "a safe and secure environment for staff and
17 detainees" and a facility that "shall accommodate 1,575 adult detainees." *Id.* at 45. GEO's
18 relationship with ICE is described as a "partnership" that is "open, collaborative, customer-
19 oriented, and professional." *Id.* at 43. The contract states that only ICE detainees may be kept at
20 NWDC and GEO cannot use the facility to house detainees from other agencies without ICE's
21 approval. *Id.* at 51-1. The contract has apparently been amended ten times, but none of the
22 amendments make fundamental changes to GEO's relationship with ICE. *See* ICE Contract
23 Amendments, Dkt. # 51-2.

1 On March 7, 2017, the City passed Interim Emergency Ordinance No. 28417, which
2 “identif[ied] private correctional facilities as an unpermitted use in all zoning districts.”
3 Dkt. # 52, Ex. C, at 3-4. Ordinance 28417 specifically singled out NWDC as the only private
4 facility that could be affected by this prohibition. *Id.* at 2. On April 24, the Acting Director of
5 ICE sent a letter to the mayor of Tacoma expressing his concern about Ordinance No. 28417
6 singling out NWDC, a facility used by the Federal Government. Homan Letter, Dkt. # 52, Ex. D.
7 Several weeks later, the City passed Modified Interim Emergency Ordinance No. 28429, which
8 removed the blanket prohibition on private facilities. Dkt. # 51, Ex. E.

9 On February 6, 2018, the City solidified the goals from its interim ordinances by passing
10 Amended Ordinance No. 28491. The Amended Ordinance prohibits correctional and detention
11 facilities in all zoning districts other than Light Industrial (M-1). Dkt. # 52-1, Ex. F, at 2-3. It
12 also “require[s] a Conditional Use Permit [CUP] for new correctional and detention facilities (in
13 zones where they are allowed) or significant modifications to existing ones” and “limit[s] the
14 availability of expansion for correctional and detention facilities by conditional use in the M-1
15 zone, to M-1 zones that were in place as of January 1, 2018.” *Id.* at 3. The accompanying
16 revisions to the City’s Municipal Code provide that detention and correctional facilities are
17 permitted only in the M-1 zone with a CUP. Dkt. # 70-2, Ex. M, at 159-60. The Code further
18 states that a CUP is “only available in the M-1 zones in place as of January 1, 2018.” *Id.* Initially,
19 this limitation was only imposed on detention facilities (i.e., NWDC), *see id.*, but it now applies
20 to both detention and correctional facilities, *see* TACOMA, WASH., MUNICIPAL CODE,
21 § 13.06.400, [https://cms.cityoftacoma.org/cityclerk/Files/MunicipalCode/Title13-LandUse](https://cms.cityoftacoma.org/cityclerk/Files/MunicipalCode/Title13-LandUseRegulatoryCode.PDF)
22 [RegulatoryCode.PDF](https://cms.cityoftacoma.org/cityclerk/Files/MunicipalCode/Title13-LandUseRegulatoryCode.PDF) (last visited Nov. 4, 2019).

1 When the Amended Ordinance was passed, NWDC was located in the Port Maritime &
2 Industrial (PMI) zone, rather than an M-1 zone, and therefore became a nonconforming use.
3 Shakir Decl., Dkt. # 53, at 2; Findings of Fact and Recommendations Report, Dkt. # 70-2, Ex. I,
4 at 3. The City's two public correctional facilities, the Pierce County Jail and the Remann Hall
5 juvenile detention facility, were already nonconforming uses prior to the Amended Ordinance
6 and were "not significantly impacted" by its passage. *Id.* at 3-4.

7 The Amended Ordinance explains several of the City's considerations in passing the new
8 zoning rules. They include "quality of life, health, safety, environmental, equity, and liability
9 concerns of people living in areas not appropriate for human living," such as the "Tideflats
10 industrial area." Amended Ordinance, Dkt. # 52-1, Ex. F, at 1-2. In public hearings and through
11 other writings, however, several Tacoma City Councilmembers have expressed disapproval of
12 private prisons, GEO specifically, and President Trump's immigration agenda. Graham Decl.,
13 Dkt. # 70, Exs. C, E, F, & G.

14 DISCUSSION

15 1. Standing and Ripeness

16 The City argues that GEO's claims are not justiciable because they lack standing and
17 their dispute is not ripe. To be justiciable under Article III of the U.S. Constitution, a claim must
18 present a concrete "case or controversy" to invoke the court's jurisdiction. *Thomas v. Anchorage*
19 *Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000). On summary judgment, a plaintiff
20 may not merely rely on allegations in their complaint but must "set forth by affidavit or other
21 evidence specific facts" showing that they have standing and their dispute is ripe. *Lujan v. Defs.*
22 *of Wildlife*, 504 U.S. 555, 112 S. Ct. 2130, 2134 (1992).

1 The ripeness inquiry is “designed to prevent the courts, through avoidance of premature
2 adjudication, from entangling themselves in abstract disagreements.” *Thomas v. Anchorage*
3 *Equal Rights Comm’n*, 220 F.3d 1134, 1138 (9th Cir. 2000). Ripeness involves both
4 constitutional and prudential components. *Id.* The constitutional component largely overlaps with
5 standing and asks whether the plaintiff faces a “realistic danger of sustaining a direct injury” or
6 “whether the alleged injury is too ‘imaginary’ or ‘speculative’ to support jurisdiction.” *Id.* at
7 1139 (quoting *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979)). The
8 prudential component is distinct from standing and turns on “the fitness of the issues for judicial
9 decision and the hardship to the parties of withholding court consideration.” *Stormans, Inc. v.*
10 *Selecky*, 586 F.3d 1109, 1126 (9th Cir. 2009) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136,
11 149 (1967)).

12 Courts addressing challenges under the Supremacy Clause have analyzed whether the
13 relevant law poses a concrete threat to the plaintiff. In *United States Postal Service v. City of*
14 *Berkeley*, a case similar to this one, the court determined that the dispute was ripe because
15 Berkeley’s ordinance was an “active and ongoing” obstruction to USPS’s ability to sell its
16 property. 228 F. Supp. 3d 963, 967 (N.D. Cal. 2017). The court observed that USPS had been
17 trying to sell for years; in fact, Berkeley’s ordinance was passed as a last-ditch effort to thwart a
18 particular sale. *Id.* at 965-66. In *United States v. Supreme Court of New Mexico*, where the
19 plaintiffs challenged a rule that would place restrictions on federal prosecutors’ ability to issue
20 subpoenas, the court held that standing was satisfied because there was evidence of prosecutors
21 declining to issue subpoenas to avoid discipline under the rule. 839 F.3d 888, 899-901 (10th Cir.
22 2016).

1 In the current set of briefs, GEO provides no evidence of actions that would bring it into
2 contact with the Amended Ordinance. *See* GEO Opposition, Dkt. # 69, at 8. However, in
3 response to the City’s previous Motion for Summary Judgment, GEO produced a declaration
4 stating that the company “continues to work with its consultants at Lydig Construction and
5 Integrus Architecture to plan for expansions” to NWDC. Shakir Decl., Dkt. # 42, at 1. GEO
6 apparently wishes to modify NWDC to accommodate “new programs, training, administrative
7 offices, and multipurpose spaces,” as well as “new structured and surface parking areas.” *Id.* To
8 substantiate these attestations, GEO produced a letter from Integrus Architecture explaining the
9 “disciplines and tasks necessary” to apply for a CUP and an invoice showing that GEO has been
10 billed \$4,133.00 for a pre-construction “feasibility study.” Dkt. # 41, Ex. A; Dkt. # 42, Ex. B.

11 This evidence is sufficient to establish standing and ripeness. Although the pre-
12 construction work GEO commissioned may be unrelated to the Amended Ordinance’s CUP
13 requirements, it nonetheless evidences that GEO has expended time and money on a future
14 project at NWDC. It is possible that this project may be abandoned or even that it is nothing
15 more than a litigation strategy. However, GEO’s evidence is still enough to show that it faces a
16 more-than-speculative likelihood of being injured by the City’s Ordinance. The prudential
17 component of ripeness is also satisfied—GEO need not have actually applied for a permit for the
18 Court to adjudicate its claims and withholding judgment could force GEO to expend more
19 resources on a CUP requirement that may not be constitutionally tenable. GEO’s claims are
20 therefore justiciable.

21 The City argues strenuously that GEO’s claims are not ripe because it has not applied for
22 a CUP to expand NWDC. The City is correct that the Ninth Circuit typically imposes stricter
23 ripeness requirements for “constitutional challenge[s] to land use regulations.” *See Kawaoka v.*
24

1 *City of Arroyo Grande*, 17 F.3d 1227, 1232 (9th Cir. 1994). In such cases, a plaintiff must obtain
2 a “final and authoritative determination” regarding development of their property before the
3 dispute becomes ripe. *Kinzli v. City of Santa Cruz*, 818 F.2d 1449, 1453 (9th Cir. 1987) (quoting
4 *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 348 (1986)). This means that the
5 plaintiff must have “submitted a development plan which was rejected, [and sought] variances
6 which would permit uses not allowed under the regulations.” *Id.* at 1454 (citing *Williamson*
7 *County Regional Planning Comm’n v. Hamilton Bank*, 473 U.S. 172, 187 (1985)). Although
8 there is a “futility exception,” even this “does not alter a party’s obligation to file at least one
9 meaningful development proposal.” *Kawaoka*, 17 F.3d at 1232 (citing *Herrington v. County of*
10 *Sonoma*, 857 F.2d 567, 569 (9th Cir.1988)).

11 However, these “[r]ipeness requirements are relevant only to as applied challenges, and
12 not to facial challenges.” *Id.* (internal quotation omitted) (citing *S. Pac. Transp. Co. v. Los*
13 *Angeles*, 922 F.2d 498, 507 (9th Cir.1990)). In land use cases, a facial challenge is “a claim that
14 the mere adoption of the ordinances constitutes” a constitutional deprivation. *Southern Pacific*,
15 922 F.2d at 505. Where a claim has “characteristics of both” a facial and as applied challenge,
16 the Supreme Court has held that a facial standard applies if the requested relief would “reach
17 beyond the particular circumstances of the plaintiffs” to restrict enforcement of the law more
18 broadly. *John Doe No. 1 v. Reed*, 561 U.S. 186, 194 (2010). This applies equally to narrowly-
19 worded injunctions that would nonetheless have the practical effect of limiting the law’s
20 enforcement. *See Ctr. for Competitive Politics v. Harris*, 784 F.3d 1307, 1314 (9th Cir. 2015)
21 (following *Reed*).

22 GEO’s challenge is essentially facial. GEO’s claims under the Supremacy Clause boil
23 down to an argument that the Amended Ordinance itself unconstitutionally regulates the Federal
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1 Government by prohibiting expansion of detention facilities or conditioning expansion on a
2 CUP. Furthermore, GEO's requested relief would reach beyond its own circumstances because a
3 determination that the Amended Ordinance is unconstitutional with respect to NWDC would
4 compel the same conclusion for other facilities with ties to the Federal Government, even if none
5 currently exist. Although the City argues that GEO's claims are not a facial challenge because
6 GEO focuses only on how the Amended Ordinance affects NWDC, a facial challenge need not
7 be completely divorced from the real-world context in which a law is enacted. *See, e.g.,*
8 *Kawaoka*, 17 F.3d at 1234-38 (analyzing a facial due process challenge by considering the
9 properties that the ordinance applied to, including the plaintiffs'). Because GEO's claims amount
10 to a facial challenge, the "final determination" requirement for ripeness does not apply.

11 **2. Facial Supremacy Clause Challenge**

12 On the merits, the parties' Motions focus only on GEO's Supremacy Clause challenge to
13 the Amended Ordinance. As the Court has explained and GEO has insisted, GEO's challenge is
14 facial because it addresses the Amended Ordinance itself and its requirements for expanding
15 detention facilities, rather than the manner of a specific application. Plaintiffs must clear a "high
16 bar" to succeed in a facial challenge. *Puente Arizona v. Arpaio*, 821 F.3d 1098, 1104 (9th Cir.
17 2016). A law is only facially unconstitutional if "no set of circumstances exists under which the
18 Act would be valid. The fact that [the Amended Ordinance] might operate unconstitutionally
19 under some conceivable set of circumstances is insufficient to render it wholly invalid." *S.D.*
20 *Myers, Inc. v. City & Cty. of San Francisco*, 253 F.3d 461, 467 (9th Cir. 2001) (quoting *United*
21 *States v. Salerno*, 481 U.S. 739, 746 (1987)); *see also Puente Arizona*, 821 F.3d at 1104 (holding
22 that the strict facial challenge standard from *Salerno* applies to challenges under the Supremacy
23 Clause).

1 The Supremacy Clause establishes that the laws of the United States “shall be the
2 supreme Law of the Land[,] . . . anything in the Constitution or Laws of any State to the Contrary
3 notwithstanding.” U.S. Const. art. VI, cl. 2. GEO asserts two broad arguments under the
4 Supremacy Clause. First, GEO argues that the Amended Ordinance is invalid under the
5 intergovernmental immunity doctrine, which prohibits state or local laws that directly regulate or
6 discriminate against the Federal Government. Second, GEO contends that the Amended
7 Ordinance is preempted by acts of congress. More specifically, GEO asserts that the Amended
8 Ordinance is expressly preempted by a web of statutes related to public buildings and immigrant
9 detention, *see* 40 U.S.C. §§ 3312(c), 3301(b); 8 U.S.C. § 1231(g), and implicitly preempted
10 because it conflicts with other federal statutes and because congress has occupied the field of
11 immigration law.

12 ***a. Intergovernmental Immunity***

13 The so-called “intergovernmental immunity doctrine” derives from the Supreme Court’s
14 decision in *McCulloch v. Maryland*, which held that “the states have no power, by taxation or
15 otherwise, to retard, impede, burden, or in any manner control, the operations of the
16 constitutional laws enacted by congress to carry into execution the powers vested in the general
17 government.” *United States v. City of Arcata*, 629 F.3d 986, 991 (9th Cir. 2010) (quoting
18 *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819)). State or local governments therefore
19 may not “regulate[] the United States directly or discriminate[] against the Federal Government
20 or those with whom it deals.” *Id.* (quoting *North Dakota v. United States*, 495 U.S. 423, 435
21 (1990)).

22 Under the “direct regulation” branch of the intergovernmental immunity doctrine, “states
23 [and local governments] may not directly regulate the Federal Government’s operations or
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1 property.” *Blackburn v. United States*, 100 F.3d 1426, 1435 (9th Cir. 1996). For example, *Boeing*
2 *Co. v. Movassaghi* held that California could not impose uniquely stringent requirements on the
3 activities of Boeing, a federal contractor, at a federal cleanup site. 768 F.3d 832, 839 (9th Cir.
4 2014); *see also Blackburn*, 100 F.3d at 1426 (California law requiring safety signs and ropes at
5 parks was invalid as applied to Yosemite National Park).

6 A law may also violate the intergovernmental immunity doctrine by discriminating
7 against the Federal Government. “A state or local law discriminates against the Federal
8 Government if it treats someone else better than it treats the government.” *United States v. City*
9 *of Arcata*, 629 F.3d 986, 991 (9th Cir. 2010). In other words, the law must be “imposed on some
10 basis unrelated to the object’s status as a Government contractor or supplier” and be “imposed
11 equally on other similarly situated constituents of the State.” *North Dakota v. United States*, 495
12 U.S. 423, 438 (1990). Analysis of an allegedly discriminatory ordinance “must proceed from the
13 text of the ordinance, not the alleged motives behind it.” *United States Postal Service v. City of*
14 *Berkeley*, 228 F. Supp. 3d at 969 (quoting *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137,
15 1146 n.7 (9th Cir. 2004)). However, “the inevitable effect of a statute on its face may render it
16 unconstitutional.” *Id.* (quoting *United States v. O’Brien*, 391 U.S. 367, 384-85 (1968)).

17 The intergovernmental immunity doctrine, and the Supremacy Clause generally, apply to
18 federal contractors insofar as the challenged law “regulate[s] what the federal contractors [have]
19 to do or how they [do] it pursuant to their contracts.” *Boeing Co.*, 768 F.3d at 839. Thus “a
20 federally owned facility performing a federal function is shielded from direct state regulation,
21 even though the federal function is carried out by a private contractor, unless Congress clearly
22 authorizes such regulation.” *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 181 (1988).
23 Likewise, private entities may not be subjected to discriminatory treatment “on account of their
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1 dealings with” the Federal Government. *Boeing*, 768 F.3d at 842 (quoting *North Dakota v.*
2 *United States*, 495 U.S. 423, 435 (1990)). Increased economic burden on federal contractors,
3 however, is not enough to violate the Supremacy Clause. *Id.* at 839.

4 Here, GEO has not shown that the Amended Ordinance directly regulates the Federal
5 Government. GEO seems to believe that its relationship with ICE provides a complete shield
6 against any regulation, but that is incorrect. A federal contractor’s immunity is limited by the
7 scope of its obligations to the U.S. government. *See Boeing Co.*, 768 F.3d at 839. In this case, the
8 Amended Ordinance’s restrictions on expansion do not necessarily interfere with how GEO
9 carries out its contractual duties. It is perfectly conceivable that GEO could want to expand its
10 own private facility for its own private reasons. Indeed, there is no evidence that the Federal
11 Government has anything to do with GEO’s vague plans to expand NWDC or that all
12 conceivable expansions are integral to processing immigrants. GEO’s planned expansion could
13 be for something as superfluous as a management lounge or as anticipatory as a new wing to
14 accommodate a contract with a different agency. *See* 2015 ICE Contract, Dkt. # 51-1, at 53. In
15 short, the Supremacy Clause does not automatically bar local regulation of a contractor’s
16 property that does not necessarily impede the federal operations going on there.

17 GEO insists that intergovernmental immunity bars any building codes from applying to
18 federal contractors and relies on several out-of-circuit decisions to support this proposition. The
19 Court is not bound by these decisions, but the current case is distinguishable at any rate. In *U.S.*
20 *Postal Service v. City of Hollywood, Fla.*, the court held that a city could not mandate its own
21 permitting requirements on a USPS project to build a new post office on land leased from a
22 private party. 974 F. Supp. 1459, 1461, 1462-63 (S.D. Fla. 1997); *see also U.S. Postal Serv. v.*
23 *Town of Greenwich, Conn.*, 901 F. Supp. 500, 506 (D. Conn. 1995) (finding intergovernmental
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1 immunity where USPS “contracted with private companies to lease the site and to construct a
 2 building instead of purchasing land and constructing the building itself.”). But there is no direct
 3 government involvement here—there is no evidence of ICE taking steps to expand NWDC. Even
 4 if such a situation is conceivable, GEO’s facial challenge can only succeed if “no set of
 5 circumstances exists” under which the Amended Ordinance could be constitutional. *Salerno*, 481
 6 U.S. at 746. GEO cannot meet this standard.¹

7 The Amended Ordinance is also non-discriminatory. GEO contends that the Amended
 8 Ordinance is discriminatory because it limits expansion to M-1 zones in place as of January 1,
 9 2018, for detention facilities (i.e. NWDC) but contains no such limitation for correctional
 10 facilities (i.e. the Pierce County Jail and Remann Hall). GEO is correct that the City’s Municipal
 11 Code initially contained this imbalance after the Amended Ordinance was passed (as explained
 12 in footnote 1, it is unclear whether this language actually prohibits expansion). *See* Graham
 13 Decl., Dkt. # 70-2, Ex. M, at 159-60. However, the City states that this was a scrivener’s error
 14 that has been corrected. *See* Victor Decl., Dkt. # 66. Indeed, the City’s Code now imposes the
 15 same requirements on detention and correctional facilities, and the Amended Ordinance itself
 16 contains no unequal language. *See* TACOMA, WASH., MUNICIPAL CODE, § 13.06.400, [https://cms.](https://cms.cityoftacoma.org/cityclerk/Files/MunicipalCode/Title13-LandUseRegulatoryCode.PDF)
 17 [cityoftacoma.org/cityclerk/Files/MunicipalCode/Title13-LandUseRegulatoryCode.PDF](https://cms.cityoftacoma.org/cityclerk/Files/MunicipalCode/Title13-LandUseRegulatoryCode.PDF) (last
 18 visited Nov. 4, 2019); Dkt. # 52, Ex. F, at 3. Any prior discrimination has therefore ceased.

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 20
 21 ¹ The parties also argue over whether the Amended Ordinance creates a full moratorium on expanding NWDC or
 22 simply requires a CUP for expansion. While the revisions to the City’s Municipal Code suggest that expansion is
 23 prohibited outside the M-1 zone, *see* Dkt. # 70-2, Ex. M, at 160, the Amended Ordinance itself states that “a
 24 Conditional Use Permit [is required for] . . . significant modifications to existing” facilities, Dkt. # 52-1, Ex. F, at 3,
 and the Code explains that a CUP may be acquired for expansions to non-conforming uses, *see* TACOMA, WASH.,
 MUNICIPAL CODE, § 13.06.630, [https://cms.cityoftacoma.org/cityclerk/Files/MunicipalCode/Title13-LandUse](https://cms.cityoftacoma.org/cityclerk/Files/MunicipalCode/Title13-LandUseRegulatoryCode.PDF)
[RegulatoryCode.PDF](https://cms.cityoftacoma.org/cityclerk/Files/MunicipalCode/Title13-LandUseRegulatoryCode.PDF) (last visited Nov. 4, 2019). The Court need not resolve this dispute because, even if the
 Amended Ordinance prohibits expansion of NWDC, it still does not necessarily interfere with GEO’s obligations to
 the Federal Government.

GEO also argues that the Amended Ordinance is discriminatory because it only imposes new restrictions on NWDC. But this is because Tacoma’s two public correctional facilities were “already nonconforming use[s]” before the Amended Ordinance was passed. *See* Findings of Fact and Recommendations Report, Dkt. # 70-2, Ex. I, at 3-4. In other words, rather than “treat[ing] someone else better than . . . the [federal] government,” *Arcata*, 629 F.3d at 991, the Amended Ordinance merely imposes the same restrictions on NWDC that already applied to state facilities. This type of equal treatment is the opposite of discrimination.²

b. Preemption

In addition to its intergovernmental immunity argument, GEO contends that the Amended Ordinance is preempted by federal law. There are three types of federal preemption: express, field, and conflict. *Nat’l Fed’n of the Blind v. United Airlines Inc.*, 813 F.3d 718, 724 (9th Cir. 2016). Express preemption only occurs if a statute explicitly “withdraw[s] specified powers from the States.” *Arizona v. United States*, 567 U.S. 387, 399 (2012). Courts should “use the text of the provision, the surrounding statutory framework, and Congress’s stated purposes in enacting the statute to determine the proper scope of an express preemption provision.” *Chae v. SLM Corp.*, 593 F.3d 936, 942 (9th Cir. 2010). If the text of a law is susceptible to multiple readings, “courts ordinarily accept the reading that disfavors pre-emption.” *McClellan v. I-Flow Corp.*, 776 F.3d 1035, 1039 (9th Cir. 2015) (internal quotation omitted).

Field preemption prohibits states from “regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance.”

² GEO also relies on statements by some Tacoma City Councilmembers in arguing that the Amended Ordinance was passed with discriminatory intent. However, the intergovernmental immunity analysis is not concerned with the potential “nefarious motive” behind the challenged law. *City of Berkeley*, 228 F. Supp. 3d at 969 (quoting *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1146 n.7 (9th Cir. 2004)). This makes any politically-motivated statements by City Councilmembers irrelevant.

1 *Arizona*, 567 U.S. at 399. This intent can only be “inferred from a framework of regulation ‘so
2 pervasive . . . that Congress left no room for the States to supplement it’ or where there is a
3 ‘federal interest . . . so dominant that the federal system will be assumed to preclude enforcement
4 of state laws on the same subject.’” *Id.* (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218,
5 230 (1947)).

6 Finally, conflict preemption is exactly what it sounds like—a rule preempting state and
7 local laws that conflict with federal law. *McClellan*, 776 F.3d at 1039. A conflict may occur
8 when “compliance with both federal and state regulations is a physical impossibility” or when
9 the state law “stands as an obstacle to the accomplishment and execution of the full purposes and
10 objectives of Congress.” *Id.* (quoting *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S.
11 132, 142–143 (1963) and *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

12 When conducting preemption analysis, courts should be “mindful of the adage that
13 Congress does not cavalierly preempt” state and local laws. *Nat’l Fed’n of the Blind*, 813 F.3d at
14 724 (quoting *Montalvo v. Spirit Airlines*, 508 F.3d 464, 471 (9th Cir.2007)). Laws enacted
15 pursuant to a state or local government’s historic police powers should be presumed valid
16 “unless [preemption] was the clear and manifest purpose of Congress.” *Arizona*, 567 U.S. at 400.

17 Here, none of GEO’s preemption arguments hold water. GEO’s claim of express
18 preemption turns on a convoluted interpretation of several congressional statutes governing
19 public buildings and immigrant detention. Basically, GEO argues that the Federal Government
20 need only “consider” (rather than adhere to) local zoning laws when constructing federal
21 buildings, *see* 40 U.S.C. § 3312(c), and need not even do that in the case of federal immigration
22 detention facilities, *see* 40 U.S.C. § 3301(b); 8 U.S.C. § 1231(g).

1 Fortunately, the Court need not delve too far into the tortured logic supporting these
2 conclusions because GEO's arguments fail for a more obvious reason: these statutes apply to
3 *federal* projects. 40 U.S.C. § 3312(c) provides that "each building constructed or altered *by the*
4 *administration or any other federal agency* shall be constructed or altered only after
5 consideration of all . . . zoning laws." (emphasis added). Even if the word "consider" bears the
6 loose meaning that GEO proposes, it is irrelevant here because NWDC is a private facility that
7 can be expanded by its private owner. There is no reason to believe that changes to NWDC
8 would necessarily be ordered by the Federal Government. Similarly, 8 U.S.C. § 1231(g) states
9 that the "*Attorney General* shall arrange for appropriate places of detention for aliens detained
10 pending removal." (emphasis added). It says nothing about a federal contractor's decision to
11 modify its own facility or the applicability of local zoning laws. This is a far from a "clear and
12 manifest statement" by congress preempting local law. *See Arizona*, 567 U.S. at 400.

13 There is also no field preemption. GEO relies on the Immigration and Nationality Act,
14 which constitutes "a comprehensive and complete code covering all aspects of admission of
15 aliens to this country," *Toll v. Moreno*, 458 U.S. 1, 13 (1982), including "the detention, release,
16 and removal of aliens" and "places of detention," 8 U.S.C. § 1231(g). But as the Court has
17 already explained, the Amended Ordinance does not impact the Attorney General's ability to rent
18 "facilities adapted or suitably located for detention," § 1231(g), nor does it regulate any aspect of
19 how immigrants are processed at NWDC. This is simply not a law "on the same subject" as the
20 Immigration and Nationality Act. *See Arizona*, 567 U.S. at 399.

21 Finally, the Amended Ordinance also does not conflict with federal law for similar
22 reasons. Although the Federal Government has "discretion to select the detention facilities where
23 aliens are to be detained," *Comm. of Cent. Am. Refugees v. I.N.S.*, 795 F.2d 1434, 1438 (9th
24

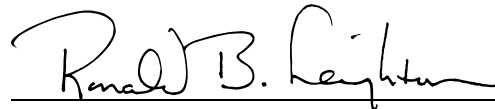
1 Cir.), the Amended Ordinance does not obstruct that discretion. The Amended Ordinance's
2 requirements for theoretical expansions to NWDC do not interfere with the government's
3 decision to contract with GEO and detain immigrants at NWDC. There is thus no conflict
4 preemption or other preemption of any kind. The Amended Ordinance survives GEO's facial
5 Supremacy Clause challenge.

6 **CONCLUSION**

7 For the above reasons, GEO's Motion for Partial Summary Judgment is DENIED and the
8 City's Motion is GRANTED in part. GEO's claims under the Supremacy Clause are dismissed.

9 IT IS SO ORDERED.

10
11 Dated this 13th day of November, 2019.

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13 

14 Ronald B. Leighton
United States District Judge